

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON

Jeffery Day,

Plaintiff,

v.

Case No. 3:16-cv-437
Judge Thomas M. Rose

Kim DeLong, *et al.*,

Defendants.

ENTRY AND ORDER FINDING MOOT MOTION *IN LIMINE* TO EXCLUDE TROTWOOD DEFENDANTS EMT EXPERTS UNDER FED. R. CIV. P. 26(A)(2)(C) AND 37 BY JEFFREY DAY (ECF 114) AND DENYING MOTION *IN LIMINE* EXCLUDING PLAINTIFF'S EXPERTS NOT PREVIOUSLY DISCLOSED BY DEFENDANTS NAPHCARE INC. AND JACK SAUNDERS. (ECF 117). THE PARTIES ARE GRANTED UNTIL FEBRUARY 21 TO MOVE THE COURT TO REOPEN DISCOVERY, IF NECESSARY.

GRANTING IN PART AND DENYING IN PART MOTION *IN LIMINE* REGARDING SAUNDERS' EMPLOYMENT BY NAPHCARE INC. AND JACK SAUNDERS (ECF 118). PLAINTIFF MAY NOT USE EVIDENCE OF ANY PRIOR BAD ACTS TO SHOW SAUNDERS' CHARACTER OR ACTIONS IN CONFORMITY THEREWITH, BUT CAN USE SUCH EVIDENCE FOR IMPEACHMENT.

GRANTING IN PART, DENYING IN PART, AND FINDING MOOT IN PART, MOTION *IN LIMINE* TO EXCLUDE EVIDENCE RELATING TO OTHER LAWSUITS, ALLEGED INCIDENTS NOT THE SUBJECT MATTER OF THIS CASE, DISMISSED CLAIMS, CERTAIN TRIAL EXHIBITS IDENTIFIED BY PLAINTIFF, AND THE TESTIMONY AND REPORT OF JOHN BURKE, PH.D. BY MONTGOMERY COUNTY BOARD OF COMMISSIONERS AND PHIL PLUMMER. (ECF 119).

It is hereby ordered that:

Motion *in Limine* to Exclude Trotwood Defendants EMT Experts Under Fed. R. Civ. P. 26(a)(2)(C) and 37 by Jeffrey Day (ECF 114) is **MOOT** in light of the Court's having granted the Trotwood Defendants' Motion for Summary Judgement, ECF 122; Motion *in Limine*

excluding Plaintiff's experts not previously disclosed by Defendants NaphCare Inc. and Jack Saunders (ECF 117) is **DENIED**. The parties are granted until February 21 to move the Court to reopen discovery, if necessary.

Motion *in Limine* regarding Saunders' employment by NaphCare Inc. and Jack Saunders (ECF 118), is **GRANTED IN PART**. Plaintiff may not use evidence of any prior bad acts to show Saunders' character or actions in conformity therewith, but can use such evidence for impeachment.

Motion *in Limine* to Exclude Evidence Relating to Other Lawsuits, Alleged Incidents Not the Subject Matter of this Case, Dismissed Claims, Certain Trial Exhibits Identified by Plaintiff, and the Testimony and Report of John Burke, Ph.D. by Montgomery County Board of Commissioners and Phil Plummer (ECF 119) is in five parts:

As regards (1) any and all evidence relating to other lawsuits involving any named Defendants in this case and regarding alleged incidents that are not the subject matter of this case; the motion is **GRANTED IN PART**. At trial, the Court will bifurcate the questions of liability from any questions of punitive damages or the possibility of a pattern or practice of Constitutional violations by the County. In the event that the jury finds a violation of Plaintiff's constitutional rights, Plaintiff will be permitted to introduce evidence or testimony as to the other cases, in order to prove a pattern or practice of constitutional violations pursuant to which the County itself might be held liable.

As regards (2) any and all evidence regarding claims that this Court may dismiss pursuant to these and other Defendants' motions for summary judgment; the motion is **MOOT**, as Plaintiff represents he has no intention of introducing evidence regarding claims that have been dismissed.

As regards (3) any mention of punitive damages against these Defendants; the motion is **DENIED**. The claims against Saunders and NaphCare are individual claims, and thus subject to claims for punitive damages.

As regards (4) "certain exhibits identified by Plaintiff":

Plaintiff's Exhibit 44, photos showing a sign that reads "If you can talk then you obviously can f***ing breathe" are **ADMISSIBLE**;

Plaintiff's Exhibit 39, Photos of Plaintiff's Injuries, is **ADMISSIBLE**;

Plaintiff's Exhibit 6, Videos of the Montgomery County Jail, is **ADMISSIBLE** to show liability when showing Plaintiff. The footage from Video 27 and Video 9 depict Plaintiff during the first thirteen (13) seconds of Video 27, and the first thirty (30) seconds of Video 9. Video of others may be shown if relevant to showing a pattern or practice, should liability be established;

and;

as regards (5) testimony of John Burke, Ph.D.; Plaintiff's exhibit 41: John Burke, Ph.D. Economic Report; and Plaintiff's exhibit 42: Life Expectancy Table the motion is **DENIED**.

DONE and **ORDERED** in Dayton, Ohio, this Tuesday, February 12, 2019.

s/Thomas M. Rose

THOMAS M. ROSE
UNITED STATES DISTRICT JUDGE